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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,115	03/14/2005	Seiji Nakayama	403265	3130

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180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6731

EXAMINER

WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/517,115

Applicant(s)

NAKAYAMA ET AL.

Examiner

Ana L. Woodward

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 29, 2007 ; July 19, 2007
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/19/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide express support for the 3 parts by weight upper limit now governing the polyamide component. Accordingly, said new upper limit is deemed new matter.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-16, 18, 19, 21, 22, 24, 25, 27, 28, 30 and 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1239008 or U.S. 6,733,853 (both to Takashima et al).

The references each disclose polyester-based resin compositions comprising 3 to 40% by mass of a partially aromatic polyamide resin (A) and 97 to 60% by mass of a polyester (B). The polyamide usually contains an alkali metal-containing phosphorus compound, for example sodium hypophosphite, to enhance the processing stability during the melt molding or prevent the coloring of the polyamide resin. The production of the polyester is usually carried out by using a polycondensation catalyst, for example, an antimony compound.

In reference to the presently claimed contents of alkali metal and phosphorus atoms, given that the concentration of the references' alkali metal-containing phosphorus compound is 200 ppm or less in terms of phosphorus atom, a similar ppm in terms of the alkali metal atom content would be reasonably expected. It is noted that phosphorus atom contents falling within the scope of the present claims are set forth in the examples. Accordingly, similar-such contents of alkali metal contents are reasonably expected.

Regarding the presently claimed concentration of antimony atom, the amount of antimony compound used as the catalyst in the production of the references' polyester is 50-400 ppm. It is noted that antimony atom contents falling within the scope of the present claims are set forth in the examples.

It is noted that the presently claimed upper limit of the polyamide is now recited as 3 parts by weight of polyamide per 100 parts by weight of polyester. When the claimed range and the prior art range contain contents that are very similar (i.e., 3 parts versus 3.1 parts), the range of the prior art establishes prima facie obviousness because one of ordinary skill in the art would have expected the similar contents to have the same properties. It is, therefore, maintained that the prior art lower limit of 3.1 parts polyamide would have rendered obvious the use of 3 parts polyamide to one having ordinary skill in the art with the reasonable expectation of success. Accordingly, absent evidence of unusual or unexpected results for the presently claimed upper limit of 3 parts, as opposed to the references' lower limit of 3.1 parts, no patentability can be seen in the presently claimed subject matter.

Art Unit: 1796

4. Claims 7, 17, 20, 23, 26, 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1239008 or U.S. 6,733,853 (both to Takashima et al), as applied above, further in view of U.S. 7,022,390 (Odorisio et al).

The Takashima et al references disclose that their blends may contain additional materials, e.g., stabilizers. Odorisio et al disclose that the use of various amino-containing stabilizers, e.g., hydroxylamine, amine oxide, etc., in a composition comprising polyester and polyamide results in lower residual acetaldehyde content. The content of stabilizer ranges from 5 to 0.01% by weight, most preferably 1 to 0.03% by weight (column 3, lines 59-65). It would have been obvious to one having ordinary skill in the art to have employed the amino-containing stabilizers per Odorisio et al in the compositions of Takashima et al for the expected effect of obtaining lower residual acetaldehyde content. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the claimed subject matter.

Response to Arguments

5. Applicant's arguments filed October 29, 2007 have been fully considered but they are not persuasive.

It is noted that the presently claimed upper limit of the polyamide is now recited as 3 parts by weight of polyamide per 100 parts by weight of polyester. When the claimed range and the prior art range contain contents that are very similar (i.e., 3 parts versus 3.1 parts), the range of the prior art establishes prima facie obviousness because one of ordinary skill in the art would have expected the similar contents to have the same properties. It is, therefore, maintained that the prior art lower limit of 3.1 parts polyamide would have rendered obvious the use of 3 parts polyamide to one having ordinary skill in the art with the reasonable expectation of success.

Art Unit: 1796

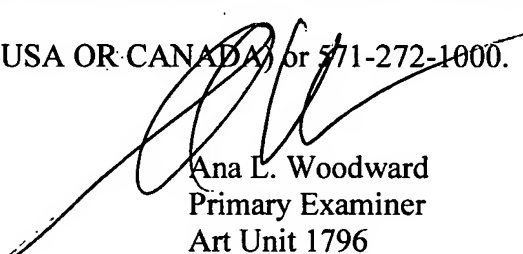
Accordingly, absent evidence of unusual or unexpected results for the presently claimed upper limit of 3 parts, as opposed to the references' lower limit of 3.1 parts, no patentability can be seen in the presently claimed subject matter.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (571) 272-1082. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ana L. Woodward
Primary Examiner
Art Unit 1796
